



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-939]

Certain Three-Dimensional Cinema Systems and Components Thereof

Commission Determination to Review the Final Initial Determination in Part; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation on December 16, 2015. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street,

S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 12, 2014, based on a complaint filed by RealD, Inc. of Beverly Hills, California ("RealD"). 79 *Fed. Reg.* 73902-03. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain three-dimensional cinema systems and components thereof that infringe certain claims of U.S. Patent Nos. 7,905,602; 8,220,934; 7,857,455; and 7,959,296. *Id.* at 73902. The notice of investigation named as respondents MasterImage 3D, Inc. of Sherman Oaks, California, and MasterImage 3D Asia, LLC of Seoul, Republic of Korea (collectively, "MasterImage"). *Id.* at 73903. The Office of Unfair Import Investigations was not named as a party to the investigation. *Id.*

On December 16, 2015, the ALJ issued a final ID finding a violation of section 337 with respect to all three asserted patents. The ALJ found that the asserted claims of each patent are infringed. The ALJ found that the asserted claims of the asserted patents are not invalid for anticipation or obviousness. The ALJ found that the asserted claims of the '455 patent satisfy the written

description and the definiteness requirements of 35 U.S.C. § 112. The ALJ found that the asserted patents are not unenforceable due to inequitable conduct. The ALJ found that the '296 patent properly named all inventors of that patent. The ALJ found that the technical prong of the domestic industry requirement was satisfied for the asserted patents. The ALJ also issued a Recommended Determination on Remedy and Bonding ("RD"), recommending that a limited exclusion order and a cease and desist order should issue and that a bond of 100 percent should be imposed during the period of presidential review.

On December 29, 2015, MasterImage filed a petition for review challenging various findings in the final ID. On January 6, 2016, RealD filed a response to MasterImage's petition. On January 15, 2016, and January 19, 2016, MasterImage and RealD respectively filed post-RD statements on the public interest under Commission Rule 210.50(a)(4). The Commission did not receive any post-RD public interest comments from the public in response to the Commission notice issued on December 22, 2015. 80 *Fed. Reg.* 80795 (Dec. 28, 2015).

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review in part the ALJ's determination of a section 337 violation. Specifically, the Commission has determined to review (1) the ID's construction of the "uniformly modulate" limitation recited in claims 1 and 17 of the '455 patent; (2) the ID's infringement findings with respect to the asserted claims of the '455 patent; (3) the ID's findings on validity of the asserted claims of the '455 patent; (4) the ID's finding of proper

inventorship of the '296 patent; (5) the ID's findings on validity of the asserted claims of the '934 patent; and (6) the ID's finding regarding the technical prong of the domestic industry requirement with respect to the '455 patent.

The Commission has determined not to review the remaining issues decided in the final ID. In connection with its review, the Commission requests responses to the following questions only. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. Discuss whether the accused products satisfy the limitation "uniformly modulate" recited in claims 1 and 17 of the '455 patent if the limitation is construed as:
"operating on all input light to change it from one polarization state to another polarization state."
2. Applying the construction in Question No. 1, discuss whether the prior art discloses or suggests the limitation "uniformly modulate."
3. Applying the construction in Question No. 1, discuss whether the alleged domestic industry products satisfy the limitation "uniformly modulate."
4. Discuss whether the written description requirement under § 112, ¶ 1 is satisfied with respect to the asserted claims of the '455 patent that do not require an element for rotating the polarization state of the light energy in one path to match the polarization state of the light energy in the other path. Explain the role of such rotation in

improving image brightness. In addition, discuss the necessity of such rotation where a single polarization modulator is used.

5. Discuss any authorities that have excluded from the scope of a limited exclusion order components of an infringing product where those components are also used in non-adjudicated products, and discuss whether those authorities apply in this investigation. In addition, discuss whether a certification provision in a limited exclusion order would address the parties' dispute as to such components.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles.

Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on all of the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant RealD is also

requested to submit proposed remedial orders for the Commission's consideration. RealD is also requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported, and provide identification information for all known importers of the subject articles. Initial written submissions and proposed remedial orders must be filed no later than close of business on **Tuesday, March 1, 2016**. Initial written submissions by the parties shall be no more than 50 pages, excluding any attachments or exhibits. Reply submissions must be filed no later than the close of business on **Friday, March 11, 2016**. Reply submissions by the parties shall be no more than 30 pages, excluding any attachments or exhibits. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-939") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission

and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Issued: February 16, 2016.

Lisa R. Barton,

Secretary to the Commission.

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